

ORIGINAL

OPEN MEETING



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**MEMORANDUM
RECEIVED**

Arizona Corporation Commission

DOCKETED

AUG 6 2010

TO: THE COMMISSION

2010 AUG -6 P 2:50

FROM: Utilities Division

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: August 6, 2010

DOCKETED BY	
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RE: IN THE MATTER OF THE APPLICATION OF ZAYO BANDWIDTH, LLC AND ZAYO FIBER SOLUTIONS, LLC (FKA AGL NETWORKS, LLC) FOR AUTHORITY TO ENCUMBER ASSETS.
(DOCKET NOS. T-20694A-10-0295 AND T-20667A-10-0295)

Introduction

On July 9, 2010, Zayo Bandwidth, LLC ("ZB") and Zayo Fiber Solutions, LLC (formerly known as AGL Networks, LLC) ("ZFS") requested approval to encumber their property through the grant of a security interest in their assets in support of additional long-term debt obligations of up to \$125 Million (for an aggregate of up to \$450 Million in existing and additional long-term debt obligations). These additional financing arrangements are expected to be on substantially the same or better terms as the financing arrangements approved by the Commission in Decision No. 71704 for ZFS and being considered by the Commission in Docket No. T-20694A-10-0076 for ZB. These additional financing arrangements are expected to be used, in part, to fund a strategic acquisition by Zayo that is expected to close in approximately 90 days.

The Applicant's Transaction

The proposed transaction is a financing application that will encumber assets.

Staff's Analysis

In response to a Staff email data request, ZB and ZFS stated that prepaid customer funds and deposits will not be encumbered. On July 21, 2010, Zayo provided Staff with an advance copy of its public notice of financing application. The Company published a notice of its financing application in the Arizona Republic on July 23, 2010, and filed its affidavit on August 5, 2010. ZB and ZFS were found to be in Good Standing and in Compliance by the Customer Service and Compliance Sections of the Commission.

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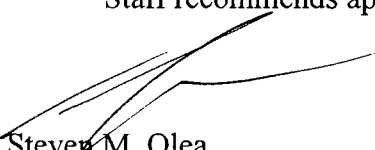
Staff's Recommendations

A.R.S. § 40-285 requires public service corporations to obtain Commission authorization to encumber certain utility assets. The statute serves to protect captive customers from a utility's act to dispose of any of its assets that are necessary for the provision of service; thus, it serves to preempt any service impairment due to disposal of assets essential for providing service. Based on its analysis of the proposed transaction, Staff concludes that the transaction would not impair the financial status of the Company, would not impair its ability to attract capital, nor would it impair the ability of the Company to provide safe, reasonable, and adequate service. Staff, therefore, recommends that the Commission approve the Applicants' request to encumber their Arizona assets as described in their application.

Staff concludes that a pledge of the Applicants' assets would not impair the availability of service to customers since the Applicant provides competitive services that are available from alternative service providers. Customers may still have exposure to losses to the extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the application subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by the Applicants.

Staff further recommends that ZB and ZFS file with Docket Control, as a compliance item in this matter, copies of the loan documents within 90 days of the execution of any financing transaction authorized herein.

Staff recommends approval of this Application with the conditions stated herein.



Steven M. Olea
Director
Utilities Division

SMO:AFF:tdp\AV

Originator: Armando F. Fimbres

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BEFORE THE ARIZONA CORPORATION COMMISSION

KRISTIN K. MAYES
Chairman
GARY PIERCE
Commissioner
PAUL NEWMAN
Commissioner
SANDRA D. KENNEDY
Commissioner
BOB STUMP
Commissioner

IN THE MATTER OF THE APPLICATION
OF ZAYO BANDWIDTH, LLC AND ZAYO
FIBER SOLUTIONS, LLC (FKA AGL
NETWORKS, LLC) FOR AUTHORITY TO
ENCUMBER ASSETS.

DOCKET NOS. T-20694A-10-0295
T-20667A-10-0295
DECISION NO. _____
ORDER

Open Meeting
August 24 and 25, 2010
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On July 9, 2010, Zayo Bandwidth, LLC ("ZB") and Zayo Fiber Solutions, LLC (formerly known as AGL Networks, LLC) ("ZFS") requested approval to encumber their property through the grant of a security interest in their assets in support of additional long-term debt obligations of up to \$125 Million (for an aggregate of up to \$450 Million in existing and additional long-term debt obligations). These additional financing arrangements are expected to be on substantially the same or better terms as the financing arrangements approved by the Commission in Decision No. 71704 for ZFS and being considered by the Commission in Docket No. T-20694A-10-0076 for ZB. These additional financing arrangements are expected to be used, in part, to fund a strategic acquisition by Zayo that is expected to close in approximately 90 days.

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1 The Applicant's Transaction

2 2. The proposed transaction is a financing application by competitive local exchange
3 carriers ("CLECs") that will encumber assets.

4 Staff's Analysis & Recommendations

5 3. In response to a Staff email data request, ZB and ZFS stated that prepaid customer
6 funds and deposits will not be encumbered.

7 4. On July 21, 2010, Zayo provided Staff with an advance copy of its public notice of
8 financing application. The Company published a notice of its financing application in the Arizona
9 Republic on July 23, 2010, and filed its affidavit on August 5, 2010.

10 5. ZB and ZBS were found to be in Good Standing and in Compliance by the
11 Customer Service and Compliance Sections of the Commission.

12 6. A.R.S. §40-285 requires public service corporations to obtain Commission
13 authorization to encumber certain utility assets. The statute serves to protect captive customers
14 from a utility's act to dispose of any of its assets that are necessary for the provision of service;
15 thus, it serves to preempt any service impairment due to disposal of assets essential for providing
16 service. Based on its analysis of the proposed transaction, Staff concludes that the transaction
17 would not impair the financial status of the Company, would not impair its ability to attract capital,
18 nor would it impair the ability of the Company to provide safe, reasonable, and adequate service.
19 Staff, therefore, recommends that the Commission approve the Applicants' request to encumber
20 their Arizona assets as described in their application.

21 7. Staff concludes that a pledge of the Applicants' assets would not impair the
22 availability of service to customers since the Applicant provides competitive services that are
23 available from alternative service providers. Customers may still have exposure to losses to the
24 extent they have prepaid for service or made deposits, therefore, Staff recommends approval of the
25 application subject to the condition that all customer deposits and prepayments be excluded from
26 encumbrance and equivalent amounts be retained by the Applicants.

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8. Staff further recommends that one copy of executed security documents be filed with Docket Control, as a compliance item in this docket, within 90 days of the decision in this matter.

9. Staff recommends approval of this Application with the conditions stated herein.

CONCLUSIONS OF LAW

1. The Applicants are public service corporations within the meaning of Article XV of the Arizona Constitution and A.R.S. § 40-285.

2. The Commission has jurisdiction over the Applicants and the subject matter in this filing.

3. The Commission, having reviewed the filing and Staff's Memorandum dated August 6, 2010, concludes that it is in the public interest to grant approval for the Applicants to encumber assets as proposed in the financing arrangement discussed herein.

ORDER

IT IS THEREFORE ORDERED that the application of Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC requesting approval to encumber assets as described and discussed herein, be and hereby is approved.

IT IS FURTHER ORDERED that Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC be authorized to engage in any transactions and to execute any documents necessary to effectuate the authorizations granted.

IT IS FURTHER ORDERED that the application of Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC is subject to the condition that all customer deposits and prepayments be excluded from encumbrance and equivalent amounts be retained by Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC.

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IT IS FURTHER ORDERED that copies of executed security documents be filed with Docket Control within 90 days of the decision in this matter.

IT IS FURTHER ORDERED that this Decision shall be become effective immediately.

BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto, set my hand and caused the official seal of this Commission to be affixed at the Capitol, in the City of Phoenix, this _____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO:AFF:tdp\AV

1 SERVICE LIST FOR: Zayo Bandwidth, LLC and Zayo Fiber Solutions, LLC (FKA Agl
2 Networks, LLC)

3 DOCKET NOS. T-20694A-10-0295 and T-20667A-10-0295

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